

CONDOMINIUM PUBLIC REPORT

Prepared &
Issued by:

Developer Diamond Pacific Homes, LLC
Business Address P. O. Box 272349, Fort Collins, CO 80527

Project Name(*): THE VILLAS AT PUALI (Report covers 22 of 104 apartments designated as Phase III-D) **
Address: 4261 Puhi Road, Lihue, Kauai, Hawaii 96766

Registration No. 5179

Effective date: May 14, 2007
Expiration date: November 10, 2007

Preparation of this Report:

This report has been prepared by the Developer pursuant to the Condominium Property Act, Chapter 514A, Hawaii Revised Statutes, as amended. This report is not valid unless the Hawaii Real Estate Commission has issued a registration number and effective date for the report.

This report has not been prepared or issued by the Real Estate Commission or any other government agency. Neither the Commission nor any other government agency has judged or approved the merits or value, if any, of the project or of purchasing an apartment in the project.

Buyers are encouraged to read this report carefully, and to seek professional advice before signing a sales contract for the purchase of an apartment in the project.

Expiration Date of Reports. Preliminary Public Reports and Final Public Reports automatically expire thirteen (13) months from the effective date unless a Supplementary Public Report is issued or unless the Commission issues an order, a copy of which is attached to this report, extending the effective date for the report.

Exception: The Real Estate Commission may issue an order, a copy of which shall be attached to this report, that the final public report for a two apartment condominium project shall have no expiration date.

Type of Report:

- ☐ **PRELIMINARY:**
(yellow) The developer may not as yet have created the condominium but has filed with the Real Estate Commission minimal information sufficient for a Preliminary Public Report. A Final Public Report will be issued by the developer when complete information is filed.
- ☐ **FINAL:**
(white) The developer has legally created a condominium and has filed complete information with the Commission.
☐ No prior reports have been issued.
☐ This report supersedes all prior public reports.
☐ This report must be read together with _____
- ☒ **SUPPLEMENTARY:**
(pink) This report updates information contained in the:
☐ Preliminary Public Report dated: _____
☒ Final Public Report dated: October 10, 2006
☐ Supplementary Public Report dated: _____
- And ☐ Supersedes all prior public reports
☒ Must be read together with Final Public Report
☐ This report reactivates the _____

(*)Exactly as named in the Declaration

** The 22 apartments covered by this report were originally covered by the public reports issued under Registration No. 5179. See Special Notes on Page 2 of this Report.

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2643 to submit your request.

FORM: RECO-30 286/986/189/1190/892/0197/1098/0800/0203/0104/0107

Disclosure Abstract: Separate Disclosure Abstract on this condominium project:

☐ Required and attached to this report

☒ Not Required - Disclosures covered in this report.

Summary of Changes from Earlier Public Reports:

This summary contains a general description of the changes, if any, made by the developer since the last public report was issued. It is not necessarily all-inclusive. Prospective buyers should compare this public report with the earlier reports if they wish to know the specific changes that have been made.

☐ No prior reports have been issued by the developer.

☒ Changes made are as follows:

Civil Action No. 07-1-0035 was filed in the Circuit Court of the Fifth Circuit State of Hawaii on March 5, 2007 naming the Association of Apartment Owners of the Villas at Puuli, by its Board of Directors, as Plaintiff and Diamond Pacific Homes, LLC, John Does 1-5; Jane Does 1-5; Doe Partnerships 1-5; Doe Corporations 1-5 and Doe Entities 1-5 as Defendants. See Section on Page 20b. Section III.E and Exhibit "G" were also updated to reflect Civil Action No. 07-1-0035.

Special Notes

The 22 apartments covered by this Final Public Report are: Apartment Nos. 1 through 8 (inclusive), 17 through 22 (inclusive) and 97 through 104 (inclusive).

The 22 apartments covered by this Final Public Report were originally covered by the public reports issued under Registration No. 5179. On September 24, 2003 the Commission issued an effective date for a Preliminary Public Report (Reg. No. 5179) on the Project consisting of 104 apartments. On April 27, 2005, the Commission issued an effective date for a Contingent Final Public Report (Reg. No. 5637) covering Phase I, consisting of only 40 of the 104 apartments. On November 30, 2005, the Commission issued an effective date for a Final Public Report for Phase I-A (Reg. No. 5831) covering only 18 of the 40 apartments covered by the Contingent Final Public Report (Reg. No. 5637). On December 15, 2005, the Commission issued an effective date for a Final Public Report for Phase I-B (Reg. No. 5854) covering only 8 of the 40 apartments covered by the Contingent Final Public Report (Reg. No. 5637). On January 13, 2006, the Commission issued an effective date for a Final Public Report for Phase I-C (Reg. No. 5875) covering only 6 of the 40 apartments covered by the Contingent Final Public Report (Reg. No. 5637). On January 25, 2006, the Commission issued an effective date for a Final Public Report for Phase II (Reg. No. 5893) covering only 14 apartments previously covered by the Preliminary Public Report (Reg. No. 5179) and/or the Contingent Final Public Report (Reg. No. 5637). On March 29, 2006, the Commission issued an effective date for a Contingent Final Public Report for Phase III (Reg. No. 5179) covering only 58 of the 104 apartments previously covered by the Preliminary Public Report (Reg. No. 5179). On June 1, 2006, the Commission issued an effective date for a Final Public Report for Phase III-A (Reg. No. 6000) covering only 12 of the 58 apartments previously covered by the Contingent Final Public Report (Reg. No. 5179). On June 13, 2006, the Commission issued an effective date for a Final Public Report for Phase III-B (Reg. No. 6018) covering only 12 of the 58 apartments previously covered by the Contingent Final Public Report (Reg. No. 5179). On September 6, 2006, the Commission issued an effective date for a Final Public Report for Phase III-C (Reg. No. 6098) covering only 12 of the 58 apartments previously covered by the Contingent Final Public Report (Reg. No. 5179). This Final Public Report covers the following 22 of the 58 apartments: Apartment Nos. 1 through 8 (inclusive), 17 through 22 (inclusive) and 97 through 104 (inclusive).

The 104 apartments have been substantially completed.

2. **Limited Common Elements:** Limited Common Elements are those common elements which are reserved for the exclusive use of the owners of certain apartments.

☐ There are no limited common elements in this project.

☒ The limited common elements and the apartments which use them, as described in the Declaration, are:

☒ described in Exhibit F.

☐ as follows:

3. **Common Interest:** Each apartment will have an undivided fractional interest in all of the common elements. This interest is called the "common interest." It is used to determine each apartment's share of the maintenance fees and other common profits and expenses of the condominium project. It may also be used for other purposes, including voting on matters requiring action by apartment owners. The common interests for the apartments in this project, as described in the Declaration, are:

☒ described in Exhibit D.

☐ as follows:

- E. **Encumbrances Against Title:** An encumbrance is a claim against or a liability on the property or a document affecting the title or use of the property. Encumbrances may have an adverse effect on the property or your purchase and ownership of an apartment in the project.

Exhibit G describes the encumbrances against the title contained in the title report dated April 2, 2007, and issued by Title Guaranty of Hawaii, Inc.

2. Rights Under the Sales Contract: Before signing the sales contract, prospective buyers should ask to see and carefully review all documents relating to the project. If these documents are not in final form, the buyer should ask to see the most recent draft. These include but are not limited to the:
- A) Condominium Public Reports issued by the developer which have been given an effective date by the Hawaii Real Estate Commission.
 - B) Declaration of Condominium Property Regime, as amended.
 - C) Bylaws of the Association of Apartment Owners, as amended.
 - D) House Rules, if any.
 - E) Condominium Map, as amended.
 - F) Escrow Agreement.
 - G) Hawaii's Condominium Property Act (Chapter 514A, HRS, as amended) and Hawaii Administrative Rules, (Chapter 16-107, adopted by the Real Estate Commission, as amended).
 - H) Other: Design Guidelines, Form of Shared Appreciation Agreement, County of Kauai Ordinance No. PM-2005-372.

Copies of the condominium and sales documents and amendments made by the developer are available for review through the developer or through the developer's sales agent, if any. The Condominium Property Regime law (Chapter 514A, HRS) and the Administrative Rules (Chapter 107) are available online. Please refer to the following sites:

Website to access official copy of laws: www.capitol.hawaii.gov

Website to access unofficial copy of laws: www.hawaii.gov/dcca/hrs

Website to access rules: www.hawaii.gov/dcca/har

This Public Report is a part of Registration No. 5179 filed with the Real Estate Commission on August 26, 2003.

Reproduction of Report. When reproduced, this report must be on:

☐ YELLOW paper stock

☐ WHITE paper stock


☒ PINK paper stock

8. Civil No. 07-1-0035 ("Civil Action") was filed in the Circuit Court of the Fifth Circuit, State of Hawaii by the Association of Apartment Owners of the Villas at Puali, by its Board of Directors, as Plaintiff, against Diamond Pacific Homes, LLC (among others), the Defendant. The Civil Action alleges that the Defendant did not file a notification with the State of Hawaii Real Estate Commission as required by Hawaii Revised Statutes ("HRS") §§514A-15(b) and 514B-41(b) notifying the Commission and the apartment owners of the commencement date of each owner's obligation to pay maintenance fees. In such Civil Action, Plaintiff prays for a) an order requiring the Defendant to continue to pay the common expenses of the Project until such time Defendant has complied with the requirements of the HRS; b) that Plaintiff be awarded all costs and expenses, including reasonable attorneys' fees as determined by the court and c) that Plaintiff be awarded any other and further relief that the court considers proper.

As of the date of this report, Developer has filed the requisite notice with the Commission, however, Purchaser should be aware that this suit has not yet been adjudicated or settled. As such, purchaser, once an owner of an apartment in the Project, will be considered a member of the association which is the "Plaintiff" under the pending Civil Action. Purchaser should further be aware that depending on the outcome of the Civil Action, there may be expenses relating thereto that may become the responsibility of the association.

- D. The developer declares subject to the penalties set forth in section 514A-49(b) that this project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to Act 251 (SLH 2000) [Section 514A-1.6] (The developer is required to make this declaration for issuance of an effective date for a final public report.)
- E. The developer hereby certifies that all the information contained in this Report and the Exhibits attached to this Report and all documents to be furnished by the developer to buyers concerning the project have been reviewed by the developer and are, to the best of the developer's knowledge, information and belief, true, correct and complete.

DIAMOND PACIFIC HOMES, LLC
a Hawaii limited liability company

By 
MATT DEAL
Its Managing Member

4.19.07
Date

Distribution:

Department of Finance, County of Kauai

Planning Department, County of Kauai

EXHIBIT "G"

ENCUMBRANCES AGAINST TITLE

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. -AS TO LOT 1812:-

DESIGNATION OF EASEMENT "660"

PURPOSE : sewer
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

3. -AS TO LOT 1813:-

DESIGNATION OF EASEMENT "661"

PURPOSE : sewer
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

4. -AS TO LOT 1814:-

DESIGNATION OF EASEMENT "662"

PURPOSE : sewer
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

5. -AS TO LOT 1815:-

DESIGNATION OF EASEMENT "654"

PURPOSE : electrical
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

6. -AS TO LOT 1816:-

DESIGNATION OF EASEMENT "651"

PURPOSE : drain
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

7. -AS TO LOT 1817:-

DESIGNATION OF EASEMENT "652"

PURPOSE : drain
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

8. -AS TO LOT 1820:-

DESIGNATION OF EASEMENT "655"

PURPOSE : electrical
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

9. -AS TO LOT 1832:-

DESIGNATION OF EASEMENT "657"

PURPOSE : electrical
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

10. -AS TO LOT 1839:-

DESIGNATION OF EASEMENT "659"

PURPOSE : electrical
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

11. -AS TO LOT 1840:-

DESIGNATION OF EASEMENT "648"

PURPOSE : access and utility
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

12. -AS TO LOT 1841:-

DESIGNATION OF EASEMENT "647"

PURPOSE : access and utility
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

13. -AS TO LOT 1842:-

DESIGNATION OF EASEMENT "658"

PURPOSE : electrical
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

14. -AS TO LOT 1849:-

DESIGNATION OF EASEMENT "656"

PURPOSE : electrical
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

15. -AS TO LOT 1855:-

(a) DESIGNATION OF EASEMENT "649"

PURPOSE : bus stop
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

(b) DESIGNATION OF EASEMENT "663"

PURPOSE : sewer
SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

(c) DESIGNATION OF EASEMENT "478"

SHOWN : on Map 134, as set forth by Land Court Order No. 122779, filed December 14, 1995, said Land Court Order was amended by Land Court Order No. 124059, filed April 18, 1996

16. -AS TO LOT 1854 AND 1856:-

DESIGNATION OF EASEMENT "478"

SHOWN : on Map 134, as set forth by Land Court Order No. 122779, filed December 14, 1995, said Land Court Order was amended by Land Court Order No. 124059, filed April 18, 1996

17. -AS TO LOTS 1806, 1826, 1833 AND 1851:-

RESTRICTION OF VEHICULAR ACCESS RIGHTS

SHOWN : on Map 176, as set forth by Land Court Order No. 166469, filed June 14, 2006

18. The terms and provisions contained in the following:

INSTRUMENT : LIMITED WARRANTY DEED

DATED : September 27, 2004

FILED : Land Court Document No. 3175303

19. REAL PROPERTY MORTGAGE; SECURITY AGREEMENT; ASSIGNMENT OF RENTS; FIXTURE FILING; AND FINANCING STATEMENT

MORTGAGOR : DIAMOND PACIFIC HOMES, LLC, a Hawaii limited liability company

MORTGAGEE : CENTRAL PACIFIC BANK, a Hawaii corporation

DATED : September 30, 2004

FILED : Land Court Document No. 3175304

AMOUNT : 1) non-revolving construction loan in the aggregate principal amount of \$5,200,000.00

2) revolving construction loan in the aggregate principal amount of \$5,000,000.00

Above REAL PROPERTY MORTGAGE; SECURITY AGREEMENT; ASSIGNMENT OF RENTS; FIXTURE FILING; AND FINANCING STATEMENT was amended by instrument dated December 7, 2005, filed as Land Court Document No. 3365783, re: to increase the Revolving Loan amount from \$5,000,000.00 to \$5,700,000.00, and further amended by instrument dated May 22, 2006 (effective April 1, 2006), filed as Land Court Document No. 3433228, re: to increase the Revolving Loan amount from \$5,700,000.00 to \$6,000,000.00 and to increase the outstanding principal amount of Term Loan from \$0.00 to \$5,200,000.00.

20. FINANCING STATEMENT

DEBTOR : DIAMOND PACIFIC HOMES, LLC

SECURED
PARTY : CENTRAL PACIFIC BANK

RECORDED : Document No. 2004-204882

RECORDED ON: October 5, 2004

(Not noted on Land Court Certificate of Title No. 718,762.)

21. The terms and provisions contained in the following:

INSTRUMENT : ASSIGNMENT OF NET SALES PROCEEDS

DATED : September 30, 2004
FILED : Land Court Document No. 3175305
PARTIES : DIAMOND PACIFIC HOMES, LLC, a Hawaii limited liability company, "Assignor", and
CENTRAL PACIFIC BANK, as Hawaii corporation, "Assignee"
RE : to secure the repayment of 1) non-revolving construction loan in the aggregate principal amount of
\$5,200,000.00, and 2) revolving construction loan in the aggregate principal amount of
\$5,000,000.00.

Above ASSIGNMENT OF NET SALES PROCEEDS was amended by instrument dated December 7, 2005, filed as Land Court Document No. 3365783, re: to increase the Revolving Loan amount from \$5,000,000.00 to \$5,700,000.00, and further amended by instrument dated May 22, 2006 (effective April 1, 2006), filed as Land Court Document No. 3433229, re: to increase the Revolving Loan amount from \$5,700,000.00 to \$6,000,000.00 and to increase the outstanding principal amount of Term Loan from \$0.00 to \$5,200,000.00.

22. SECOND MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

MORTGAGOR : DIAMOND PACIFIC HOMES, LLC, a Hawaii limited liability company
MORTGAGEE : MKA REAL ESTATE OPPORTUNITY FUND I, a California limited liability company
DATED : as of October 5, 2004
FILED : Land Court Document No. 3175306
AMOUNT : \$2,308,000.00

ABOVE MORTGAGE ASSIGNED

TO : GULFSTREAM CAPITAL LLC, a California limited liability company
DATED : May 22, 2006 (effective April 1, 2006)
FILED : Land Court Document No. 3433230

SUBORDINATION AND INTERCREDITOR AGREEMENT

REC DATE : September 30, 2004
FILED : Land Court Document Nos. 3175307 Thru 3175308

Subordinates said above SECOND MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT to the lien of that certain REAL PROPERTY MORTGAGE; SECURITY AGREEMENT; ASSIGNMENT OF RENTS; FIXTURE FILING; AND FINANCING STATEMENT filed, as Land Court Document No. 3175304.

Said above SUBORDINATION AND INTERCREDITOR AGREEMENT was amended by instrument dated December 7, 2005, filed as Land Court Document No. 3365784 (consent thereto given by MKA REAL ESTATE OPPORTUNITY FUND I, LLC, a California limited liability company), and further amended by instrument dated May 22, 2006 (effective April 1, 2006), filed as Land Court Document No. 3433230. Consent thereto given by GULFSTREAM CAPITAL, LLC, a California limited liability company and MKA REAL ESTATE OPPORTUNITY FUND I, LLC, a California limited liability company, by instrument filed as Land Court Document No. 3433231.

23. The terms and provisions contained in the following:

INSTRUMENT : WAIVER, RELEASE AND INDEMNITY AGREEMENT
DATED : March 17, 2005
RECORDED : Document No. 2005-067837
PARTIES : DIAMOND PACIFIC HOMES LLC (Applicant) and DEPARTMENT OF WATER, COUNTY OF KAUAI (Department of Water)

(Not noted on Land Court Certificate of Title No. 718,762.)

24. GRANT

TO : KAUAI ISLAND UTILITY COOPERATIVE, a cooperative association
DATED : May 12, 2005
FILED : Land Court Document No. 3292754
GRANTING : a right-of-entry and easement for utility purposes

25. THIRD MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

MORTGAGOR : DIAMOND PACIFIC HOMES, LLC, a Hawaii limited liability company
MORTGAGEE : MKA REAL ESTATE OPPORTUNITY FUND I, LLC, a California limited liability company
DATED : September 22, 2005
FILED : Land Court Document No. 3332658
AMOUNT : \$3,986,000.00

26. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR "VILLAS AT PUALI" CONDOMINIUM PROJECT
DATED : January 24, 2005
FILED : Land Court Document No. 3245975
MAP : 1703 and any amendments thereto

said Declaration was amended by instruments dated September 21, 2005, recorded in said Office as Document No. 3340629; dated June 16, 2006, recorded in said Office as Document No. 3441794, and dated August 29, 2006, recorded in said Office as Document No. 3477115.

Pending Civil No. 07-1-0035 filed in the Circuit Court of the Fifth Circuit, State of Hawaii, on March 5, 2007; ASSOCIATION OF APARTMENT OWNERS OF THE VILLAS AT PUALI, "Plaintiff", vs. DIAMOND PACIFIC HOMES, LLC, a Hawaii limited liability company, and ETAL, "Defendant"; re: Declarant's liability for payment of common expenses.

27. The terms and provisions contained in the following:

INSTRUMENT : BY-LAWS OF THE ASSOCIATION OF APARTMENT OWNERS
DATED : January 24, 2005
FILED : Land Court Document No. 3245976

28. Encroachments or any other matters as shown on survey map prepared by Dennis M. Esaki, Land Surveyor, with Esaki Surveying & Mapping, Inc., dated July 2, 2002 and July 10, 2002.
29. Encroachments or any other matters which a survey prepared after July 10, 2002 would disclose.